IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 317 OF 2003

1. Mahendra Tolu Mohite,
2. Kailas Baburao Wankhede
3. Unmesh Vasant Naik
4. Suersh Balkrishna Ravanang,
5. ARvind Yeshwant Gurav,
6. Nitin Sahebrao Jadhav,
7. Sambhaji Raosaheb Jadhav,
8. Sanjaykumar Kunjan Nair,
9. Satyawan Vioshram Vishwasrao,
10. Subhash Mahadeo Savardekar,
11. Sunilo Narayan Bhalerao,
12. Bharatkumar Harilal Morodhara,
13. Motilal Sammanna Naidu,
14. Dilip Dhondiba Waman,
15. Pramod Ramchandra Phale,
16. Sanjay Krishna Jadhav,
17. Raju Shantaram Phale,
18. Dattatraya Sadashiv Khedekar,
19. Suryakant Baban Dhekle,
20. Jaykant Bhagwat MOre,k
21. Anil Vasant Rajpure,
22. Ravindra Genba Kapdekar,
23. Rajendra Krishna Nyayanit,
24. Gayaprasad Brijmohan Saroj,
25. Vinod Shantaram Jadhav,
26. Janardan Manohar Vishwasrao,
27. Shrikant Bhaskar Vichare,
28. Iqbal Alibhai Patel,
29. Balasaheb U:mraj Salvi,
30. Sanjay Pandurang Bachate,
31. Sanjay Dattatray Parab,
32. Suryakant Mahipat Kakade,
33. Suresh Tukaram Memane,
34. Rajendra Shivram Memane,
35. Rajan Atmaram Dhuri,
36. Mahesh Pandurang Waingankar,
37. Vilas Krishna Shinde,
38. Vithal Sakharam Jethe,
39. Shashikant Tatu Bhandare,
40. Prabhat Ramanand Pande,
41. Samartha Kashinath Gaikwad,
42. Ganpat Sitaram Sonde,
43. Vijay Baban Kamble,
44. Surendra Shantaram Pugaonkar,
45. Ravikant Ramchandra Kamble,
46. Sanjay Tanaji Kalebag,
47. Samadhan Sampat Sontakke,
48. Anand Babu Jadhav,
49. Maruti Tanaji Pawar,
50. Pravin Devidas Gaikwad,
51. Suresh Sitaram Rahate,
52. Sanjay Sudhakar Vanjari,

53. Ganesh Vishnu Mahadik,
54. Sanjiv Dharmarajan Manjoparabil,
55. Dhananjay Suryakant Tembulkar,
56. Subhash Ichharam More,
57. Rameshkumar Indrajit Singh,
58. Sunil Hiraman Paradkar,
59. Satish Sakharam Jadhav,
60. Dnyandeo Eknath Memane,
61. Madhukar Sakharam More,
62. Ramesh Raghunath Jadhav,
63. Haraksingh Jairamsingh,
64. Pradip Harishchandra Dongre,
65. Dinkar Chandrakant Patkar,
66. Mahesh Purshottam Kulkarni,
67. Shivaji Pandurang Ghonge,
68. MD Ratik MD Islam,
69. Harish Ishwar Bamane,
70. Arun Shivram Dukhande,
71. Dipak Dattatray Memane,
72. Vaibhav Appa Karane,
73. Dadaram Sopan Kamble,
74. Dilip Laxman Jagtap,
75. Milind Mahadeo Kamble,
76. Jagdish Mahadeo Bhalekar,
77. Sudarshan Jyoti Kamble,
78. Vasant Sampat Mane,
79. Anil Namdeo Yadav,
80. Mahadeo Namdeo Kamble,
81. Vijay Vkishnu Jadhav,
82. R. Ruben Raju Nadar,
83. Anil Balu Kadam,
84. Ajay Mahadeo Gaikwad,
85. Shrikant Annappa Dodamani,
86. Sandeep Sadanand Rane,
87. Thankarajan P. Konar,
88. Manoj Bhagawan Patel,
89. Santosh Dattu Sawalekar,
90. Suresh Arjun Shinde,
91. Naresh Siddappa Kurale,
92. Hanumant Vasant Kamble,
93. Sandeep Shankar More,
94. Vijaypalsingh M. Bhandari,
95. Manohar Krishna Rane,
96. Shivaji Manohar Babar,
97. Ravi Narayan Shinde,
98. Deepak Dhondiba Dingale,
99. Sanjay Rabha Salvi,
100. Arun Vithoba Jadhav,
101. Mahendra Uttam Nanaware,
102. Suhas Namdeo Jagtap,
103. Govind Manohar Teli,
104. Vijay Rajaram Ghadge,
105. Sanjay Namdeo Mithbavkar,
106. Pradip Arjun Kadam,
107. Dinkar Rajaram Shelar,
108. Hemant Prabhakar Kamat,
109. Santosh Tukaram Kadam,

110. Suresh Sitaram Savardekar,
111. Sunil Kashiram Dingle,
112. Ramdas Bhanudas Kunjir,
113. Ramakabal Bhuleshwaenath Mishra,
114. Mahendra Kisan Waghmare,
115. Santosh Manohar Shelar,
116. Ravindra Waman Panchal,
117. Mahendra Pandurang Pawar,
118. Parshuram Sahadeo Satav,
119. Shankar Laxman Lawangare,
120. Rajendra RAmesh Bhalerao,
121. Rajendra Nivruti Sawant,
122. Sanjay Manohar Kadam,
123. Jeevan Dadu Dupte,
124. Mayadin Sutairam Prajapati,
125. Santosh Harichandra Janwalkar,
126. Bharat Laxman Baviskar,
127. Sanjay Shankar Waghmare,
128. Nandansingh Chandersingh Khetwal,
129. Vijaykumar Dattaram Bhoir,
130. Rajan Dhondu Shetye,
131. Vijay Batav Baviskar,
132. Pravin Laxman Kajrolkar,
133. Chandrakant Ratan Pawar,
134. Rajesh Sbhajit Pandey,
135. Hemant Laxman Gharasia,
136. Sandeep Popat Jadhav,
137. Dattatray Shantaram Dabire,
138. Jagannath Bhagoji Sagare,
139. DAdu Chandar Borge,
140. Atal Suryanath Pandey,
141. Bharat Chimanlal Patel,
142. Jeetlal Sureshchandra Yadav,

all the above having their address at
C/o. Mahendra Tolu Mohite,
residing at Pitambari Niwas,
2nd Floor, Room No. 20,
Kisan Nagar No. 3, Road No. 16,
Wagle Estate, Thane 400 604. ... Petitioners

Vs.

M/s. Godrej Soaps Limited,
Pirojshanagar,
Eastern Express Highway,
Vikhroli, Mumbai 400 079. ... Respondent

Mr. Susheel Mahadeshwar i/by Ranjana Todankar for
Petitioners.

Mr. N.M. Verma with Mr. Rajesh Gehani for
Respondent.

CORAM : F.I. REBELLO,J.
DATED : SEPTEMBER 23, 2004

ORAL JUDGMENT :

1. The Petitioners herein are aggrieved by the award of the Industrial Tribunal dated 5.10.2001. By the said Award the learned Tribunal was pleased to answer the Reference partly in the affirmative as set out int he award. The Reference by the appropriate Government was to the effect whether the 249 workmen whose services were terminated should be reinstated with full backwages and consequential benefits. The learned Tribunal held that the action of the Respondent Management in discontinuing the services of the workmen is legal and proper. The Learned Tribunal however, directed the company to maintain waiting list of 249 workmen as per their seniority, category wise and consider to appoint them on priority basis as and when the services of any outside agency is taken by the Company for the purposes of ongoing work and for export order, executions. The workmen are aggrieved by the finding by the Tribunal in holding that the action of the Management in discontinuing their services was legal and proper.

2. A few facts may be set out:

. Each of the workmen covered by the reference were appointed by the respondent company on a temporary

basis. Identical letters of appointment were issued to the workmen. Clause (1) and (2) of one such letter reads as under :

> "1. Your appointment takes effect from 5th May, 1990. your employment with us shall be only for the duration of the execution of the export order. Unless otherwise, the export indent is renewed, your services shall come to an automatic end on 31st October, 1990.
>
> 2. In the event the Company is in a position to get renewal of the export order, your services shall also be renewed only for further duration of the execution of the export order."

3. On the expiry of the contractual term of appointment, fresh orders of temporary appointment were issued from 1.11.1990 too the end of December, 1990. Then from 26.12.1990 to 30.6.1991 and from 1.7.1991 to 31.7.1991. No letters thereafter have been issued to any of the workmen covered by the present Reference.

4. In the statement of claim field by the workmen, it was contended that the letters of temporary appointments were given purely to avoid giving status of permanency to the workmen and in order to do so the employer used to give appointment letters

of fixed tenure and on the expiry of the said period on the next date the employer would give another letter of appointment again for the shorter period. The workmen have worked continuously for more than 240 days since the date of joining of their services till the date of termination. It is then set out that the work which was performed was permanent in nature and the company by employing them on temporary basis for long period of time and giving artificial brakes indulged in unfair labour practice within the meaning of Industrial Disputes Act, 1947. The workmen covered by the Reference were employed on temporary basis to do the job of permanent nature and that was done with a view to deprive them the status of permanent workmen when they have worked for more than 240 days. It is then set out that the work they were doing is being done either through the contractors' employees or the job is contracted out. It is set out that their services were terminated in violation of Section 25F of the Industrial Disputes Act.

4. The Respondent Management filed their reply. Various contentions have been raised. It is pointed out that the workmen had been employed with particular reference to Section 2-00(bb) of the Industrial Disputes Act, 1947 and had been appointed for stipulated period. Non renewal of the contract with the said employees does not result in any

difference of dispute. It was denied that the workmen were employed on temporary basis in order to avoid giving them status of permanent workman. It is set out that the workmen covered by the reference were not employed as temporary workman on a permanent post but were appointed for an ad hoc period for specific purpose on account of temporary increase in work. The employer is one of the leading manufacturer of toilet soaps, chemicals etc. It is stated that in the year 1989 the employer received, all of a sudden substantial export order from the Soviet Union. As the said export order was required to be executed within a stipulated period of time, they had to recruit for the time being and for a specific period until the export order was over certain number of additional employees in order to complete the said work. The workmen were initially employed for a period of six months, then as further export order came in, the contracts entered into with them have been renewed and as such the employees were recruited and employed for a fixed tenure of employment and not beyond the contractual period. It is then stated that after sometime, the Soviet Union got disintegrated into several independent countries. No further export order was received, no business with the erstwhile Soviet Union could be continued and as there was no further orders, there was no reason to have continued the employment of these workmen as there

were sufficient and more workmen for the regular work which is being carried on in the factory. It is also pointed out that there is a recognized union in the establishment of the respondent company.

. On behalf of the workmen, oral evidence as well as documentary evidence was led. Similarly also on the part of the Respondent Management.

5. The learned Tribunal framed points for determination of which Point No. 2 reads as under :

> "2. Whether the action of the first party about the discontinuity of services of the workmen is legal and proper?"

. The learned tribunal recorded a finding in the affirmative but directed the Management to prepare waiting list. While answering the issue, the learned Tribunal noted the letters of appointment as also evidence led and in Paragraph 20, the learned Tribunal recorded that in case of all the 249 workmen such service conditions have been incorporated and it was specifically made to understood to the workmen that their appointment were made within the meaning of Sec. 2(oo)(bb) of the I.D. Act, 1947. The learned Tribunal then proceeded to hold that considering the clear stipulation in the letters of appointment and as the

workmen has accepted the appointment and acknowledged the appointment letters and also Management had been able to establish that there was no renewal of orders, there was no violation of the Mandatory provisions of Section 25F of the Industrial Disputes Act. The learned Tribunal also held that the mala fides cannot be attributed to the employer and there was no whisper in the statement of the claim that the employer had acted malafide. The Tribunal has also recorded that though there was a sudden decline in the export order at the eve of expiry of the service contract of the workmen, export orders subsequently picked up, but it is not known how the employer fulfilled the execution of such orders without the help of the second party workmen. For the aforesaid reasons answered the Reference against the workmen except to the extent of directing the company to prepare waiting list of 249 workmen.

6. At the hearing of this petition, on behalf of the Petitioner, their learned counsel contends that considering the findings by the Tribunal that export orders had not stopped and considering the term in the letter of appointment that the workmen had been appointed for the duration of export orders, it was clear that the action of the Management in terminating the services of the workmen was arbitrary and or mala fide. Once that be the case,

it is pointed out Section 2(oo)(bb) would not apply and the employer had to comply with the mandatory requirements of Section 25F of the Industrial Disputes Act. In the instant case, that has not been done and consequently the termination of the services of the workmen is inoperative and consequently the workmen are liable to be reinstated with full back wages. Learned counsel has relied on several judgments which will be adverted to in the course of discussion.

. On the other hand on behalf of the Respondent Management, their learned counsel contends that the tribunal has clearly recorded a finding that the workmen have not alleged any mala fides against the employer nor was there any pleading to the effect in the claim statement filed by the workmen before the Industrial Tribunal. Apart from that it is pointed out that the letters of appointment itself were clear that the workmen are being appointed on account of export orders and for the duration of export. In the instant case, it is pointed out that these workmen were specifically appointed in respect of the export order received from the erstwhile Soviet Union. As long as the export order subsisted, the respondent Management continued the workmen in employment. Once export orders were discontinued, the services of the workmen came to be terminated in terms of the order of appointment.

This termination of the contract squarely falls within the meaning of Section 2(oo)(bb) of the Industrial Disputes Act and consequently the action of the Management cannot be faulted with. It is therefore, submitted that this court should not interfere with the award of the Industrial Tribunal. The learned counsel also placed reliance on judgments which will be adverted to the extent that they are necessary.

7. Having heard learned counsel, the question is whether the order of the Industrial Tribunal suffers from any error of law apparent on the fact of the record. As noted earlier, the main contention urged on behalf of the petitioner workmen, in challenge to the award, is that the export orders continued. Once the export orders continued, the services of the workmen could not have been terminated. For that purpose reliance is placed on the findings recorded by the Industrial Tribunal that there was spurt of export orders. To correctly appreciate the import of Section 2(oo)(bb) and Section 25F, one will have to examine the letter of appointment itself which has been reproduced earlier. In the letter of appointment, the Management had clearly set out and informed the workmen at the time of appointment that the appointment was on account of receipt of export orders. The export orders which were received have been explained not only in the

pleadings of the Management company in the written statement filed, but also in the course of evidence led on behalf of the employer. From this evidence, which has not been controverted it becomes clear that the workmen who were all unskilled workmen were engaged and or employed on account of export orders received from the erstwhile Soviet Union. The employment continued till such time as the export orders continued. Once the export orders were discontinued, the employment was discontinued on expiry of the term of contract mentioned in the letter of appointment. The fact that the Management may be exporting otherwise, is not an issue. In the evidence of the Management it has clearly come on record that regular work was being done by their regular workmen appointed by them. It is only to meet the exigencies of the work occasioned due to export orders to Soviet Union, that the petitioner workmen who were unskilled workmen were employed for that particular exigency. In that context, let us now examine the judgements cited to find out whether they are of any assistance in so far as contentions as raised on behalf of the petitioner workmen.

. In Shailendra Nath Shukla and others Vs. Vice Chancellor, Allahabad University and others, 1987 LAB I.C. 1607 the Apex Court was dealing with Section 2(oo)(bb) of the Industrial Disputes Act. The court noted that if contractual employment is

resorted to as a mechanism to frustrate the claim of the employee to become regular or permanent against a job which continues or the nature of duties is such that colour of contractual agreement is given to take it out from S. 2(oo) then such agreement cannot be regarded as fair or bona fide. Section 2(oo)(bb) cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to employees.

. In State of Rajasthan and others Vs. Rameshwar Lal Gahlot, AIR 1996 Supreme Court 1001, the Apex Court after adverting to the Judgment of M. Venugopal Vs. Divisional Manager, LIC (1994) 2 SCC 323 observed as under :

> "When the appointment is for a fixed period, unless there is finding that power under clause (bb) of Section 2(oo) was misused or vitiated by its mala fide exercise, it cannot be held that the termination is illegal. In its absence, the employer could terminate the services in terms of the letter of appointment unless it is a colourable exercise of power. It must be established in each case that the power was misused by the management or the appointment for a fixed period was a colourable exercise of power."

. It is not necessary for me to deal with the judgment of the learned Single Judge of this court in The Zilla Parishad Nagpur and another Vs. Moreshwar Vithobaji Mendhekar and another, 2004 LAB I.C. 2505 as also the judgement in the case of Delhi Printing and Publishing Co. Ltd. Vs. Labour Court VII and another, 2003-I LLJ 1025 considering the judgement of the Apex Court.

8. In the instant case as noted earlier there is a clear finding recorded that the petitioner workmen did not plead mala fides. There is further finding recorded that in fact there were no mala fides. From the evidence of the Management more specifically of Anil Achut Rege, General Manager, CW-1 and Sunil Pednekar, Personnel Executive, Workmen, it has come on record as to why the workmen were appointed and further that after 1991, till the date of the deposition by Mr. Sunil Pednekar no person was appointed temporarily by the company. To come out of the provisions of Section 2(oo)(bb) the workmen has to satisfy that a colour was given to the contractual agreement to deny the workmen regular employment when in fact there was regular employment and that power under sub section (bb) of Section 2(oo) was misused. Apart from findings of the learned Industrial Tribunal at the hearing of this petition also, the learned counsel has been

unable to point out any act of mala fide exercise of powers on the part of the workman. It may be mentioned that in case where the temporary workmen are appointed to meet the exigencies of services, the Apex Court has taken a view that it is the provision of Section 2(ooo)(bb) which will be attracted. In the case of Haryana State F.C.C.W. Store Ltd. and another Vs. Ram Niwas and other, 2002(3) L.L.N. 746 the appellant before the Apex Court was in the business of procurement and supply of grains. It had appointed the workmen to guard stock of grains lying in open area. The appointment was on contractual basis on daily wages till the disposal of stock or for specific period. The Apex Court was pleased to hold that disengagement/termination after clearance of stock or period of establishment does not amount to retrenchment.

9. On an overall view of the matter, in my opinion, the award does not suffer from any error apparent on the face of record. Hence, no interference is called for. Rule discharged. No order as to costs.

(F.I. REBELLO,J.)